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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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|-----------------|-------------|----------------------|---------------------|------------------|

10/830,045

04/23/2004

Carmelo Lo Duca

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10/31/2006

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EXAMINER

FIDEI, DAVID

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 10/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/830,045

Applicant(s)

LO DUCA, CARMELO

Examiner

David T. Fidei

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-5 and 7-14 is/are rejected.
- 7) ☒ Claim(s) 2 and 6 is/are objected to.
- 8) ☒ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

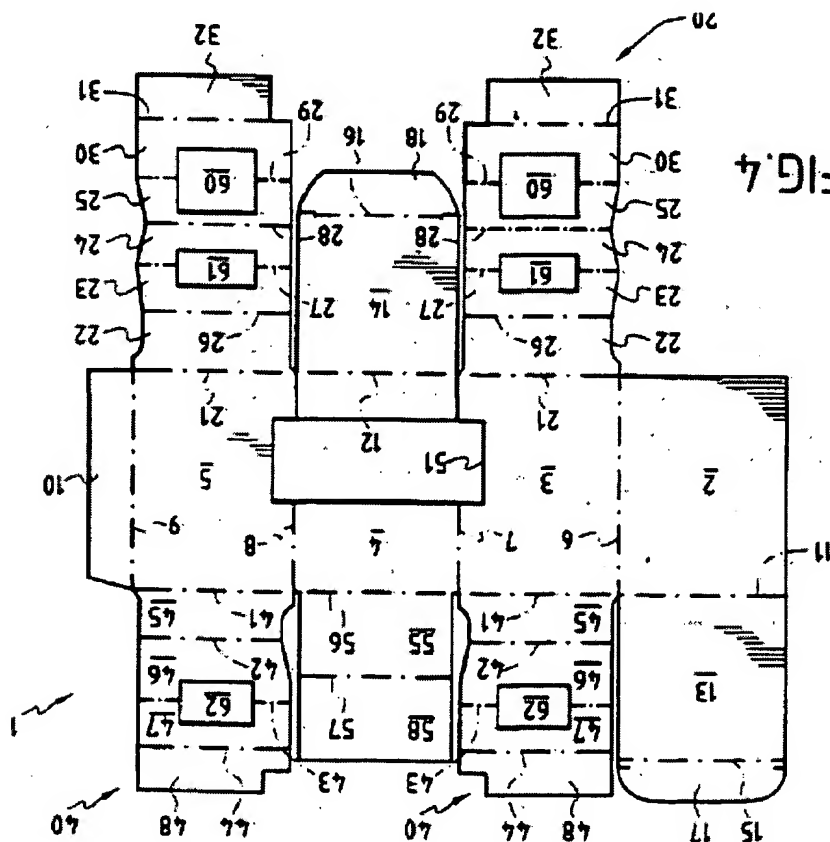
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 7-13 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 1 193 182 A1 (Published 4/2002). A box for housing and retaining a container is disclosed comprising: a first side wall (2) having a bottom lid (13) projecting from a lower end thereof; a second side wall (3) attached to said first side wall (2); a third side wall (4) attached to said second side wall (3), said third side wall (3) having a top lid (14) projecting from an upper end thereof. A fourth side wall (5) attached to said third side wall (4), said fourth side wall (5) being connected to said first side wall (2) by a tab (10),

wherein at least one of said second side wall (3) and said fourth side wall (5) includes a lower flap (40) configured to form a bottom support spaced from said bottom lid, and

wherein said second side (3) wall and said fourth (5) side wall each includes an upper flap (20) configured to form top supports spaced from said top lid.

This interpretation is derived from the fact a box such as that disclosed by EP 1 193 182 A1 can be oriented in an position including upside down. Note the figures of EP 1 193 182 A1 reproduced below.



Hence there is no distinction over EP 1 193 182 A1 from a structural standpoint as the same subject matter is set forth by applicant's claim as that disclosed by EP 1 193 182 A1

As to claim 8, the upper flaps are configured to form a pressing structure adapted to simultaneously press against lateral sides of the container and press against a top of the container towards said bottom support as shown in figure 1 of. EP 1 193 182 A1

As to claim 10 the crease lines of the upper flaps forms a “means” in as much as is claimed.

As to claim 11, the third wall 4 includes an opening 51.

As to claim 12 and 13, the disclosure provided by Applicant includes no description of whether the box is cardboard or not. However, to the extent that the box is not made of cardboard, the rejection is applied in the alternative as obvious to one of ordinary skill in the art. Cardboard boxes are notoriously well know to such an extent that using this material would have been within the level of ordinary skill for the reason of providing an inexpensive, environmentally friendly material over that of other materials such as plastic.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1, 3-5 and 7-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1 193 182 A1 (Published 4/2002) in view of Lo Duca (US Patent no. 5,540,330). EP 1 193

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182 A1 discloses the claimed subject matter except for and upper elongated flap arranged to rest and press on the top of a container inserted into the box, causing the a substantially semi-arch-shaped edge of an aperture provided in a portion of said elongate flap to simultaneously project towards the interior of the box, such that that cylindrical upper lateral surface of a container inserted into the box is securely retained laterally by said substantially semi-arch-shaped edges of the upper elongate flaps.

Lo Duca discloses that it is known in the container carton art to pressing structures with semi-arched structures 25 to accommodate the cylindrical product. It would have been obvious to one of ordinary skill in the art to modify the pressing structures of EP 1 193 182 by constructing a semi-arch-shaped edge of an aperture provided in a portion of said elongate flap to simultaneously project towards the interior of the box, in order that that cylindrical upper lateral surface of a container inserted into the box is securely retained laterally by said substantially semi-arch-shaped edges of the upper elongate flaps.

Allowable Subject Matter

6. Claims 2 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments with respect to the prior claims have been considered but are moot in view of the new ground(s) of rejection.

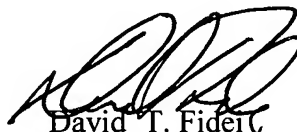
Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the Examiner concerning the merits of the claims should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David T. Fidei
Primary Examiner
Art Unit 3728

dtf
October 28, 2006